

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING PRELIMINARY SCHEDULE FOR DISPUTE RESOLUTION**

This ruling sets a preliminary schedule to resolve the dispute brought by Pac-West Telecomm, Inc. (Pac-West) by its motion filed on October 6, 2005. On February 8, 2006, an Administrative Law Judge's (ALJ) Ruling granted the motion of Pac-West for expedited resolution of its dispute with Pacific Bell Telephone Company dba AT&T California (AT&T) pursuant to the applicable provisions of the parties' currently effective interconnection agreement (ICA).¹ Pac-West sought resolution of a dispute concerning the treatment of intercarrier compensation for telephone calls that originate in the Internet Protocol (i.e., "Voice Over Internet Protocol (VoIP) traffic) and terminate on the public switched telephone network (PSTN).

¹ The ICA was approved by the Commission in D.03-05-031, pursuant to an application for arbitration filed by Pacific.

Pursuant to the ALJ ruling, the parties filed proposals on February 24, 2006, for a procedural approach to resolve the dispute. Although each party differs in terms of how it characterizes the dispute and procedural approaches for resolving it, they both express a willingness to participate in mediation as a possible means of reaching a resolution. The parties differ, however, in terms of where mediation would be sequenced within the overall process. AT&T proposes that a mediation session be scheduled to occur 14 days after an ALJ ruling adopting a procedural schedule. Pac-West proposes that a mediation session should only occur after parties file initial briefs on the legal issue in dispute. To the extent that different variations of VoIP traffic exist and to the extent such differences may affect the outcome of the legal issue presented, Pac-West argues that reasonable parties should be able to agree on factual descriptions of such traffic sufficient to permit briefing of the legal issue.

Discussion

As an initial step toward resolving this dispute, a mediation session shall be scheduled. Prior to scheduling the mediation session, however, parties shall submit initial briefs outlining their respective positions, as proposed by Pac-West. As a preliminary step, the parties shall meet and confer between themselves by March 20, 2006, to discuss and seek agreement on stipulated facts in order to form a framework for preparing briefs of their positions. The briefs shall address the following legal issue: Under current law, what intercarrier compensation should apply to VoIP and Internet Telephony traffic that is delivered by one party to the Agreement to the other party for termination to end user customers of the terminating party? The two parties shall file initial briefs by April 3, 2006 setting forth their arguments on this legal issue, and shall serve a copy of their briefs on each other.

Following the filing of initial briefs, a one-day mediation session shall be scheduled with the goal of reaching a mutually agreeable resolution of parties' dispute. The parties will be contacted concerning the selection of a mediator and arrangements as to a specific time and place for the mediation session. If parties are unable to make progress at the initial session and agree that further sessions would not be productive, then the mediator will report those results to the assigned ALJ. In that event, a further ruling will be issued concerning a schedule and process for subsequent disposition of the dispute.

IT IS RULED that:

1. The parties are directed to meet and confer between themselves by March 20, 2006, to discuss and seek agreement on stipulated facts sufficient for briefing of their positions with respect to the legal issue as discussed above.
2. The parties shall file initial briefs by April 3, 2006 of their position on the legal issue as discussed above.
3. Following the filing of initial briefs, a one-day mediation session shall be scheduled with the goal of reaching a mutually agreeable resolution of parties' dispute. The parties will be contacted concerning the selection of a mediator and arrangements as to a specific time and place for the mediation session.

Dated March 6, 2006, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Preliminary Schedule for Dispute Resolution on all parties of record in this proceeding or their attorneys of record.

Dated March 6, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.